



# ESA Basics

*Over 25 years of protecting endangered species*

## Introduction

When the Endangered Species Act (ESA) was passed in 1973, it represented America's concern about the decline of many wildlife species around the world. It is regarded as one of the most comprehensive wildlife conservation laws in the world.

The purpose of the ESA is to conserve "the ecosystems upon which endangered and threatened species depend" and to conserve and recover listed species. Under the law, species may be listed as either "endangered" or "threatened". Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened.

As of December 31, 1997, 1,125 U.S. species are listed, of which 457 are animals and 668 are plants. The list includes both U.S. and foreign species and covers mammals, birds, reptiles, amphibians, fishes, snails, clams/mussels, crustaceans, insects, arachnids, and plants. Groups with the most listed species are (in order) plants, birds, fishes, mammals, and clams/mussels.

The law is administered by the Interior Department's U.S. Fish and Wildlife Service (FWS) and the Commerce Department's National Marine Fisheries Service. The FWS has primary responsibility for terrestrial and freshwater organisms, while the National Marine Fisheries Service's responsibilities are mainly for marine species such as salmon and whales.

## Legislative History

The 1973 Endangered Species Act replaced earlier laws enacted in 1966 and 1969, which provided for a list of endangered species but gave them little meaningful protection. The 1973 law has been reauthorized seven times and amended on several occasions, most recently in 1988. The Endangered Species Act was due for reauthorization again in 1993, but legislation to reauthorize it has not yet been enacted. The Endangered Species program has continued

to receive appropriations while Congress considers reauthorization, allowing conservation actions for threatened and endangered species to continue.

## The ESA

The Endangered Species Act is a complex law with a great deal of built-in flexibility. Some basics of the law include:

### Purpose

When Congress passed the Endangered Species Act in 1973, it recognized that many of our nation's native plants and animals were in danger of becoming extinct. They further expressed that our rich natural heritage was of "esthetic, ecological, educational, recreational, and scientific value to our Nation and its people." The purposes of the Act are to protect these endangered and threatened species and to provide a means to conserve their ecosystems.

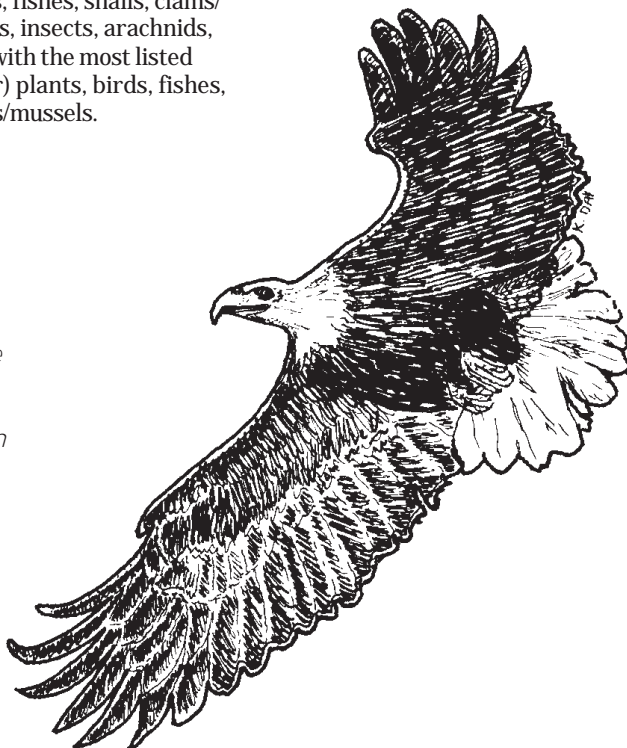
### Federal Agencies

All federal agencies are to protect species and preserve their habitats. Federal agencies must utilize their authorities to conserve listed species and make sure that their actions do not jeopardize the continued existence of listed species. The FWS and the National Marine Fisheries Service work with other agencies to plan or modify federal projects so that they will have minimal impact on listed species and their habitat.

### Working with States

The protection of species is also achieved through partnerships with the States. Section 6 of the law encourages each State to develop and maintain conservation programs for resident federally-listed threatened and endangered species. Federal financial assistance and a system of incentives are available to attract State participation. Some State laws and regulations are even more restrictive in granting exceptions or permits than the current ESA.

*threatened bald eagle*  
(*Haliaeetus leucocephalus*)  
by Karen Day Boylan



## Local Involvement

The protection of federally listed species on Federal lands is the first priority of the FWS, yet, many species occur partially, extensively or, in some cases, exclusively on private lands. Policies and incentives have been developed to protect private landowners' interests in their lands while encouraging them to manage their lands in ways that benefit endangered species. Much of the progress in recovery of endangered species can be attributed to public support and involvement.

## Listing

Species are listed on the basis of "the best scientific and commercial data available." Listings are made solely on the basis of the species' biological status and threats to its existence. The FWS decides all listings using sound science and peer review to ensure the accuracy of the best available data.

## Candidate Species

The FWS also maintains a list of "candidate" species. These are species for which the Service has enough information to warrant proposing them for listing as endangered or threatened, but these species have not yet been proposed for listing. The FWS works with States and private partners to carry out conservation actions for candidate species to prevent their further decline and possibly eliminate the need to list them as endangered or threatened.

## Recovery

The law's ultimate goal is to "recover" species so they no longer need protection under the Endangered Species Act. The law provides for recovery plans to be developed describing the steps needed to restore a species to health. Appropriate public and private agencies and institutions and other qualified persons assist in the development and implementation of recovery plans. The Clinton Administration has issued new guidelines requiring the involvement of the public and interested "stakeholders" in recovery plans. Recovery teams may be appointed to develop and implement recovery plans.

## Consultation

The law requires federal agencies to consult with the Fish and Wildlife Service to ensure that the actions they authorize, fund, or carry out will not jeopardize listed species. In the relatively few cases where the FWS determines the proposed action will jeopardize the species, they must issue a "biological opinion" offering "reasonable and prudent alternatives" about how the proposed action could be modified to avoid jeopardy to listed species. It is a very rare exception where projects are withdrawn or terminated because of jeopardy to a listed species.

## Critical Habitat

The law provides for designation of "critical habitat" for listed species when judged to be "prudent and determinable". Critical habitat includes geographic areas "on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection." Critical habitat may include areas not occupied by the species at the time of listing but that are essential to the conservation of the species. Critical habitat designations affect only federal agency actions or federally funded or permitted activities.

## International Species

The Endangered Species Act is the law that implements U.S. participation in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a 130-nation agreement designed to prevent species from becoming endangered or extinct because of international trade. The law prohibits trade in listed species except under CITES permits.

## Exemptions

The law provides a process for exempting development projects from the restrictions of the Endangered Species Act. This process permits completion of projects that have been determined to jeopardize the survival of a listed species, if a Cabinet-level "Endangered Species Committee" decides the benefits of the project clearly outweigh the benefits of conserving a species. Since its creation in 1978, the Committee has only been called upon four times to make this decision.

## Habitat Conservation Plans

This provision of the ESA is designed to relieve restrictions on private landowners who want to develop land inhabited by endangered species. Private landowners who develop and implement an approved "habitat conservation plan" providing for conservation of the species can receive an "incidental take permit" that allows their development project to go forward.

## Definition of "Take"

Section 9 of the Endangered Species Act makes it unlawful for a person to "take" a listed species. The Act says "The term take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct." The Secretary of the Interior, through regulations, defined the term "harm" in this passage as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering."

## Compliance with Other Laws

The Endangered Species Act is not the only law to protect species of wild mammals, birds, reptiles, amphibians and fishes, clams, snails, insects, spiders, crustaceans, and plants. There are many other laws with enforcement provisions to protect declining populations of rare species and their habitat, such as the Marine Mammal Protection Act, the Migratory Bird Treaty Act, and the Anadromous Fish Conservation Act. The Lacey Act makes it a federal crime for any person to import, export, transport, sell, receive, acquire, possess, or purchase any fish, wildlife, or plant taken, possessed transported or sold in violation of any Federal, State, foreign or Indian tribal law, treaty, or regulation.

## For More Information

For additional information about threatened and endangered species and current recovery efforts, contact the U.S. Fish and Wildlife Service at 703/358 2171 or 800/344 WILD. Additional materials and the current U.S. List of Endangered and Threatened Wildlife and Plants is also available over the Internet at < <http://www.fws.gov/r9endspp/endspp.html> > .